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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

SFUND RECORDS CTR  
2093743

OFFICE OF THE  
REGIONAL ADMINISTRATOR

June 8, 1998

Ms. Elsie Munsell  
Deputy Assistant Secretary of the Navy  
(Environment & Safety)  
Department of the Navy  
1000 Navy Pentagon (Rm 4A686)  
Washington, D.C. 20350-1000

Dear Ms. Munsell:

I am writing to strongly protest the Navy's decision this week to bar EPA and the State of California from collecting soil samples at Mare Island Naval Shipyard. The samples were to be collected to assess the potential for lead contamination in soil from lead-based paint at several non-residential buildings at Mare Island. The sampling had been coordinated with the Navy locally over the past several weeks, and no resistance was encountered until the day that samples were to be collected. Under the CERCLA statute and Executive Order 12580, EPA has the authority to take samples from a location of any suspected hazardous substances or pollutant. In addition, in the Navy's agreement with the State for Mare Island, which is almost identical to agreements between EPA and DoD at NPL sites, the Navy has agreed to allow the State access to conduct testing that the State deems necessary.

I am well aware that the issue of contamination from lead-based paint continues to be hotly debated with DoD locally and at headquarters, and I am also anxious for a resolution to this issue. Given your stated position, I understand your unwillingness to have the Navy conduct sampling related to lead-based paint in soil in non-residential areas. However, your decision to also prevent EPA and the State from collecting data to inform our decisions on this issue is counterproductive to reaching a resolution.

I hope that you will give this matter your immediate attention. We still plan to work with the State to complete the sampling at Mare Island as early as possible. Please call me or Keith Takata at 415/744-2355 to discuss this matter further.

Yours,

Felicia Marcus  
Regional Administrator

cc: Sherry Goodman, DoD  
Tim Fields, EPA  
Peter Rooney, Cal EPA



DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
(INSTALLATIONS AND ENVIRONMENT)  
1000 NAVY PENTAGON  
WASHINGTON, D.C. 20350-1000

4 June, 1998

Mr. Dan Opalski  
Chief, Federal Facilities Cleanup Branch  
Federal Facility Compliance Office  
Region IX, Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

*Don*  
Dear Mr. Opalski:

On Tuesday, June 2, 1998, the Site Office Staff at Mare Island Naval Shipyard restricted access to members of your staffs seeking to conduct lead sampling in non-residential areas of that base. I want to share our reasons for that decision and the underlying concerns.

This issue of lead based paint (LBP) in non-residential areas is not new to any of us. It was discussed thoroughly at the meeting among the Department of Defense, DTSC and EPA Region IX on September 11, 1997. I call your attention to the minutes of that meeting in which I participated. The minutes were thoroughly reviewed and agreed to by all parties. Essentially, we agreed to "go beyond" the current HUD Title X Regulations in residential areas in anticipation of the new TSCA 403 Regulations being developed by EPA. (Note: The TSCA 403 Regulations were proposed June 3, 1998). In return, in non-residential areas, the Navy proposed the cessation of any requirements for "DoD-only" sampling until the hazards, if any, for non-residential areas could be evaluated on a national level and appropriate regulations developed. All parties agreed. Understandably, DTSC and EPA Regions IX staffs were still concerned. As a result, the following text was added to the minutes by DTSC and/or EPA staff:

"The State believes that further dialogue on several issues such as sampling and remediation alternatives at both residential and non-residential areas, and the use of institutional controls, is necessary and should include both DoD and U.S. EPA. The State has learned that U.S. EPA will soon release its interim final policy on LBP and property transfer under CERCLA Section 120(h)(3). In light of this, the State believes it is premature to secure final agreement on all aspects of LBP until this policy has been released."

On a number of occasions, other Navy officials and I have offered to participate in a regional, state or national program of LBP sampling in non-residential areas as a precursor to rulemaking. We also indicated that we could not agree to the singling out of DoD bases for such sampling. Our installations have been asked to decline such requests. As a result of these positions and discussions by our agencies, we have been working this issue at the national level with EPA Headquarters. More specifically, we provided EPA Headquarters with draft language for Findings of Suitability for Transfer (FOSTs). This language would assure all parties that

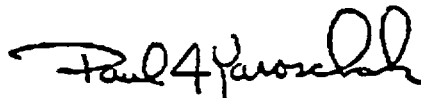
DoD would honor its CERCLA 120(h)(3) obligations and return to conduct any assessments and necessary remedial actions if LBP standards or regulations for non-residential areas are ever developed.

Given the above facts, it was a surprise to learn of the intended sampling at Mare Island without the appropriate coordination across agencies. There are legal questions as to the authorities for such sampling under the circumstances. Mare Island is not an NPL site, and EPA's involvement is only a result of DoD's policy on multi-agency BRAC Cleanup Teams (BCTs). These issues need to be discussed and resolved. It is not necessarily our intent to restrict access for taking samples. We understand it is your position that such a restriction would constitute violation of the Federal Facility Site Remediation Agreement (FFSRA) and CERCLA 104(e). Should the need and authority for sampling be agreed, we want to ensure that the objectives for sampling are well defined, a work plan is developed commensurate with those objectives, and a Quality Assurance Project Plan (QAPP) is also developed, all of which are also specified conditions of the FFSRA.

Since the need and the protocol related to sampling and abatement for LBP in non-residential areas has not been established in California or nationally, it was our opinion that the proposed sampling at Mare Island would have been premature. Please also refer to the attached letter of July 11, 1997 from Deputy Secretary of Defense John White to EPA Administrator Carol Browner regarding the Department of Defense position on this issue.

I anticipate talking to you over the next few weeks, in addition to on-going discussions with EPA Headquarters. We may also be able to schedule time for discussions while at the BCT Conference in San Diego the week of June 22, 1998. I remain committed to resolving this issue in a manner that both assures protection of human health and the environment, while assuring that our actions are consistent with those required of other regulated parties.

Please feel free to contact me at (703) 588-6695 if you wish to discuss this matter sooner.



PAUL J. YAROSCHAK  
Director, Environmental Compliance and  
Restoration Policy

**Attachment**

**Copy to:**  
**EPA HQ (Jim Woolford)**  
**ADUSD (CL) (Col Marshall)**  
**CNO (N44/N45)**  
**NAVFACENGCOM (40)**  
**EFA West NAVFACENGCOM, San Bruno CA**



## DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1010



JUL 11 1997

Honorable Carol Browner  
Administrator  
United States Environmental Protection Agency  
401 M. Street SW  
Washington, D. C. 20460

Dear Ms. Browner:

The Department of Defense (DoD) is committed to ensuring that its properties, including those it transfers at closing or realigning installations, are fully consistent with regulatory requirements and protective of human health and the environment. I understand that EPA is in the midst of a number of initiatives to deal with the risks created by lead in the environment, and specifically with the risks resulting from the historic use of lead-based paint. In addition, I understand that a number of disputes or disagreements have arisen in the field over the requests for substantial additional work to address lead-based paint on our installations, including industrial locations. These disputes threaten to delay the productive reuse of facilities and thereby have a negative effect on the President's plan for revitalizing the communities impacted by base closures. The Department is committed to ensuring that the potential source of risk is understood and, if necessary, remediated.

The Department of Defense would like to work with you to clearly identify the risks posed by lead-based paint in soil and undertake the steps necessary to ensure appropriate protection, primarily at areas to be used for nonresidential purposes, since the risks posed at residential areas are addressed pursuant to Title X of the Housing and Community Development Act of 1992 and 24 CFR 35. It is very important to DoD that standards and requirements be applied in a manner that does not single out DoD's properties — that would have the perverse affect of discouraging the economic revitalization of those communities affected by the base closures — and that the requirements result in the cost effective reduction in real risks, so as not to result in the diversion of resources that would otherwise be spent on creating meaningful reductions in risks to human health or the environment. The Military Services possess a substantial body of data on the blood lead levels of children living on military installations that DoD would be happy to make available. At a minimum that data shows that lead risks to children on military installations are generally lower than lead risks to children living off of military installations.

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We would like to work with you to develop a national strategy for reducing risk from lead, without impeding the redevelopment of brownfields and other previously used properties. Once that national strategy is developed we will participate fully in its implementation. In the meantime, until the issue is resolved, it is our intention to rely on current standards to address lead based paint issues at our installations.

I look forward to your positive response to my request.

Sincerely,

A handwritten signature in black ink, appearing to read 'John P. White', with a stylized, overlapping design.

John P. White